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C O N F I D E N T I A L HARARE 001826

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LONDON FOR CGURNEY
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NSC FOR SENIOR AFRICA DIRECTOR JENDAYI FRAZER
NAIROBI FOR PFLAUMER

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SUBJECT: POSSIBLE TEMPORARY REPRIEVE FOR SOME COMMERCIAL FARMERS

REF: A) HARARE 1822 B) HARARE 1745

Classified By: political section chief Matt Harrington. Reasons: 1.5 (B) and (D).

1. (C) The day before the August 8 deadline for designated farmers to leave their properties (reftel), a High Court judge issued a ruling that could give a temporary reprieve to affected farmers. Judge Charles Hungwe ruled that the government's acquisition of Tengwe Estates farm was "null and void" because proper procedures had not been followed. Specifically, the GOZ had failed to inform the National Merchant Bank, holder of owner Andrew Kockett's mortgage, of the acquisition, as required by the Land Acquisition Act. Kockett's attorney, Ray Barreto, told us that only his client had been served an acquisition notice. Barreto surmised that the Government may not make its usual waves over this decision, as his client is currently growing winter wheat, a commodity soon expected to be in very short supply.

2. (C) Comment: An ex-combatant in Zimbabwe's liberation war and recent appointee to the High Court, Hungwe disapproves of the use to which war veterans have been put and is considered one of the more independent thinkers on the bench. President Mugabe's recent comments on the judiciary (ref B) do not inspire confidence that Hungwe's decision will be honored. That said, the GOZ has tried to appear to act consistent with its own laws, and the failure to notify financial institutions holding the mortgages of designated commercial farms is a clear violation of the Land Acquisition Act. Hungwe's ruling could encourage other farmers to file suit, but it is unclear how many of them are in a similar position. The GOZ has three principal response options. It can ignore the ruling, but doing so removes the thin veneer of legality which currently envelops the fast track effort. It can appeal the ruling to the Supreme Court, now firmly in ZANU-PF hands, but Hungwe appears to be on very solid legal ground. Third, it can comply with Hungwe's ruling and begin the acquisition process anew, which merely will delay the government's acquisition of designated land. Hungwe's decision, therefore, has at best bought designated farmers a bit of extra time.

3. (U) Meanwhile, another case working its way through the courts could have an impact on the GOZ's resettlement program. On July 4, High Court Judge Benjamin Paradza issued a provisional order that the acquisition of Nyalugwe Farm, owned by George Quinnell, was invalid. According to Paradza, the holder of the mortgage had not been notified and Agriculture Minister Joseph Made, who signed the acquisition notice, ceased to be a government minister in legal terms on April 1. The basis of his interpretation regarding Made is section 31 (e) of the constitution, which states that the "office of Vice-President, Minister, or Deputy Minister shall become vacant upon the assumption of office of a new President." The opposition MDC and independent press have used that provision to maintain that President Mugabe's current cabinet has no legal standing, since all of its members held their positions prior to the March presidential election and have not since been reappointed. However, Quinnell's lawyer, Ray Passaportis, told us that the issue of whether Mugabe meets the definition of "new president" is clearly open to interpretation. Paradza has solicited and recently received a written GOZ response to his provisional order and has given the plaintiff a chance to submit a rebuttal.

4. (C) Comment: A decision by Paradza to uphold his earlier ruling would likely have little practical effect, as Government would certainly ignore the part of his judgment stating that the current Cabinet has no legal standing. For the reasons explained in para 2, however, the element relating to failure to notify mortgage holders would be more difficult for the GOZ to dismiss out of hand.

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